

Supreme Court Set to Rule in Odd Free Speech Case

The Supreme Court already has heard a case this fall about a busted brake light. Why not vanity license plates?

The justices agreed to decide whether Texas was right to deny a specialty license plate featuring the Confederate flag, or whether it infringed on free speech.

In doing so, the court held in abeyance another case in which North Carolina approved a “Choose Life” license plate but denied one defending a woman’s right to choose.

The cases present two issues that have come up repeatedly in lower courts: Do vanity plates speak for the government that issues them or the driver that displays them? And does the First Amendment say anything goes—or require equal treatment?

The justices have been squarely on the side of free speech in most cases recently, even when it involved distasteful protests at military funerals or disgusting “animal crush” videos. On Monday, several justices expressed concern that a Pennsylvania man’s conviction—for making what appeared to be threats on his Facebook page—went too far.

But the First Amendment right is not unlimited, particularly when it is applied unevenly. The Supreme Court refused to intervene on South Carolina’s behalf a decade ago after a lower court blocked “Choose Life” license plates there.

In the Texas case, the license plate was sought by the Sons of Confederate Veterans. A federal district judge ruled the state’s refusal was constitutional. But an appeals court reversed in a 2-1 vote and said the license plate should be issued. Texas then brought the case to the Supreme Court.

While the state allows a number of plates honoring veterans, it denied the Confederate plate because many residents considered it offensive.

The U.S. Court of Appeals for the 5th Circuit ruled in July that Texas discriminated against the Sons of Confederate Veterans' view that "the Confederate flag is a symbol of sacrifice, independence and Southern heritage." Instead, the court said Texas "credited the view that the Confederate flag is an inflammatory symbol of hate and oppression."

In the North Carolina case, a district judge struck down the state's approval of only one side's license plate as unconstitutional, and an appeals court affirmed the ruling. The U.S. Court of Appeals for the 4th Circuit said the state could not approve "Choose Life" license plates without also allowing plates preferred by abortion-rights proponents.

"Issuing a 'Choose Life' specialty license plate while refusing to issue a pro-choice specialty plate constitutes blatant viewpoint discrimination squarely at odds with the First Amendment," the court ruled.

"Apparently, North Carolina wishes to celebrate only some interests of some of its citizens—namely, those with which it agrees. This it may not do."

Another potential problem facing the law is that 60 percent of the proceeds goes to the Carolina Pregnancy Care Fellowship, while groups involved in abortion are expressly prohibited from sharing the wealth.

The decision is at odds with one from the 6th Circuit, which upheld Tennessee's anti-abortion license plates as a form of government speech. The 7th Circuit found another solution—it barred specialty plates sought by each side.